XII-189 (Jail) C.J.P.R./9-94

CF0000062146

GA 1712/99

APPEAL OF PRISONER

(2)

No दण्डित बन्दी क्रमांक 1863/59 Name राजेन्द्र प्रसाद यादव

Father's name नारायण प्रसाद यादव ग्राम व थाना सीपत जि. बिलासपुर (म.प्र.)

Residence 302 मा.उ.वि. Age 25 वर्ष

Sentenced to आजीवन कारावास स्वयं on 16.4.99

Under Section 100/- रुपये जुर्माना नपये by 1st A.S.J. Bilaspur (m.p.)

पर एक माह सश्रम कारावास।

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all if the Prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to my legal practitioner who should appear.

1 Date of Application for copy of Judgement संलग्न निर्णय छाया प्रति लिखि।

2 Date on which copy received 16.4.99

3 Date on which Appeal sent 12.6.99

4 Whether the prisoner wishes to be represented or not नहीं

No 1863/59 Name राजेन्द्र प्रसाद पि० नारायण

Confined in केन्द्रीय Jail बिलासपुर (मध्य-प्रदेश)

No 120 Dated 12.6.99 199

Forwarded to the रजिस्ट्रार महोदय उच्च न्या. जबलपुर (मध्य-प्रदेश)

to gether with a copy of judgement or order passed in the case for favour of transmi-

o the proper Appellate court.

JAIL SUPERINTENDENT,
CIRCLE BILASPUR (M.P.)

Jail

Date of Judgement 16.4.99

Date of receipt in Office Date of filing 23.6.99

Date of receipt of record to accompany the Limitation 60 days

Memo of Appeal to the Appellate court April 14

May 31

No Dated 199

Forwarded to the June 23

68

Time 60

Date of receipt in Appellate court 8 Received by Time

(P. T. O.)

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(31)

मामला क्रमांक ..... Cr.A. No. 1712/ 99 **सन् ~~200~~**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DB: Hon'ble L.C.Bhadoo, Acting C.J. &
Hon'ble Shri Sunil Kumar Sinha, J

24.1.2007

Shri Abhay Tiwari, counsel for the appellant.

Shri D.K.Gwalre, Deputy Govt. Advocate , for the State.

Arguments heard.

Oral Judgment dictated on dias as follows:

Per Sunil Kumar Sinha, J

(1) This appeal is directed against the judgment of conviction and order of sentence dated 16.04.1999 passed by the Additional Sessions Judge, Bilaspur, in Sessions Trial No.320/1998, whereby the appellant has been convicted u/s 302 IPC and has been sentenced to undergo imprisonment for life and to pay a fine of Rs.100/-, in default of payment of fine to further undergo R.I. for one month.

(2) The case of the prosecution is that on 26.5.1998 at about 8 a.m., the villagers were taking water in a public hand-pump in village. At that time the deceased namely Santara Bai had also gone to take water from the Pump, the accused appeared at the scene of occurrence and asked Santra Bai as to why she had abused him, on denial of Santra Bai, he, with the help of a *lathi*

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.1712/99 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

which was fitted with an iron ring, gave repeated blows on the vital parts of the body of Santra Bai, who fell down and died instantaneously. The matter was reported to the Police by the husband of the deceased namely Devi Shankar Yadav at about 10 a.m. on the same day and the First Information Report (Ex.P-1) was lodged in the said police station u/s 302 IPC, in which, the accused appellant was named. The investigating officer left for the scene of occurrence and after giving notice to the *Panchas* vide Ex.P-4, prepared inquest report on the dead body of the deceased vide Ex.P-5. He also prepared site plan vide Ex.P-6 and thereafter on the basis of memorandum (Ex P-7) recorded u/s 27 of the Evidence Act, seized the weapon of offence (Lathi) under Ex.P-8. Under Ex.P-9, he seized the plain soil and blood stained soil from the place of occurrence and he also seized other articles like Bucket etc. The body was sent for postmortem examination to Primary Health Center, Seepat under Ex.P-11 where the Doctor G.Venkatesh (P.W.10) conducted the postmortem examination on the body of the deceased and prepared postmortem report vide Ex.P.12. The Doctor opined that the cause of death was due to injuries caused to skull bone (vital organ) and duration was within

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मामला क्रमांक ...Cr.A.1712/98 **सन्** **200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

six hours. The death was homicidal in nature. After completion of the investigation, the Charge sheet was filed in the Court of Judicial Magistrate First Class, Bilaspur, who in turn, committed the case to the court of sessions vide order dated 07.8.1998 from where the record was received by the Addl. Sessions Judge, who conducted the trial.

(3) The learned Addl. Sessions Judge after recording the evidence of prosecution witnesses, recorded the statement of the accused u/s 313 Cr.P.C. Thereafter, two defence witnesses were also examined and after hearing the arguments of the respective counsel, the accused appellant was convicted as aforementioned. The conviction of the appellant is based upon the testimonies of two eye-witnesses namely Ku. Bharti (P.W.1) and Ku. Parmeshwari (P.W.3). So far as the homicidal death of the deceased is concerned, learned counsel for the appellant has not disputed this fact. More over, Dr. G. Venkatesh (P.W.10) who has conducted the postmortem has deposed that he had found one lacerated wound in size of 2" x ½" 1½" on the right side of the head, there was a fracture and the brain matter was also coming out from the skull. He also found clouted blood in the said injury. He

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मामला क्रमांक ..CrA/1712/98.. **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

further found a lacerated wound on the back portion of the head, which was in size of 2" x 1/2 " x 2" and the corresponding bone of this injury was also fractured and the brain matter was coming out from this injury. Thirdly, he also found one injury on the back side of the right ear which was in size of 1½" x ½" x 1" and the bone beneath this injury was also fractured and the blood was also clouted there. Lastly, he found another injury on the middle of skull which was in size of 2½" x ½" x 1" and the bone beneath the said injury was also fractured and clouted blood was also found there. On internal examination, the Doctor ultimately opined that the cause of death was due to injury sustained by the deceased and the same was homicidal in nature. Therefore, the homicidal death of the deceased is established in this case.

(4) So far as the involvement of the accused appellant in crime in question is concerned, P.W.1 Ku.Bharti has stated that on 26.5.1998 at about 8.30 a.m., she alongwith one Ritu and Neetu had gone to hand-pump for fetching water. This hand-pump is near the Girls School in the village. At that time, the accused also reached at the hand-pump and many other women were also there filling the water. The accused was armed with Danda. He asked

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आदेश पत्रक (पूर्वानुबंध)

आदेश का दिनांक तथा आदेश क्रमांक	डिप्टी रजिस्ट्रार/सहायक रजिस्ट्रार के हस्ताक्षर सहित आदेश	-5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार/सहायक रजिस्ट्रार के अन्तिम आदेश	डिप्टी रजिस्ट्रार/सहायक रजिस्ट्रार के हस्ताक्षर सहित आदेश का दिनांक

Santara Bai (deceased) why she has abused him before his sister in law (Bhabi). She states that Santra Bai has denied about it, on which, the accused assaulted Santra Bai with the help of Danda. P.W.3 Ku. Parameshwari also deposed about the assault being made by the accused on 26.5.1998. She states that she was present at the scene of occurrence. The accused has asked Santara Bai why she has abused him as his sister-in-law (Bhabi) was saying to him, on which, Santara Bai stated that she had not abused the accused. The accused said to Santra Bai that he will beat her, on this Santra Bai started laughing and said to him that "beat me if you want". But the accused started beating Santra Bai with the help of Danda which he was carrying. Though a lengthy cross examination has been done, on these statements of the witnesses, but the defence has not been able to bring any such fact on record, on the basis of which the statements of these witnesses can be held unreliable or which may shadow the credibility of these witnesses. It has also not come in the cross examination that these witnesses were either interested with the deceased or they were in inimical terms with the accused, therefore, it does not appear that they had some interest in

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

deposing about the false involvement of the accused in commission of the crime, therefore, on the basis of these two witnesses, it is established that the accused had given repeated assaults to the deceased with an intention to cause her death and ultimately after receiving the assaults, which caused as many as 4 injuries on the head of the deceased, Santra Bai died instantaneously.

(5) Learned counsel for the appellant argues that on the basis of evidence of defence witnesses namely Deoji (D.W.1) and Kishan Chand (D.W.2), it has come on record that prior to the incident, this accused was not keeping good mental condition and was suffering from insanity. He submits that in these circumstances, an offence u/s 302 IPC would not be made out and the accused appellant is entitled to benefit of section 84 of the IPC.

(6) We have examined the case on this line also. After examination of the entire record of the sessions case, it appear to us that prior to the examination of the defence witnesses, who were examined before the trial Court on 22nd March, 1999 and 31st March 1999, this fact was not brought on record before the trial Court. Even this fact was not brought to the notice of the investigating agency nor it was tried to be brought in the cross

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मामला क्रमांक Cr.A...1712/99 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

examination of the eye-witnesses as well as the investigating officer, which may suggest that the accused was not in a fit mental condition on the date of incident. Even in the examination of the accused u/s 313 Cr.P.C., it has not come from the side of the accused and nothing has been brought on record in this regard. It appears to us that after completion of the proceeding of the entire trial, for the first time, the defence has brought these two witnesses and by these two witnesses the defence has tried to bring on record that the accused was not keeping a fit mental condition, which the learned Sessions Judge has not believed. We are of the considered opinion that the said view taken by the Sessions Judge does not appear to be unreasonable because if the accused was suffering from any ailment of mental retardation, it would have been brought at the earlier stages of trial for which the opportunities were available to the defence and in the facts and circumstances, we hold that this is an after thought defence taken by the accused, which cannot be given importance and the Sessions Judge has rightly rejected the same.

(7) In the result, we do not find any substance in this appeal filed by the appellant and the judgment of conviction and sentence

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मामला क्रमांक ...Cr.A..1.7.12./99 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -8-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

awarded to the appellant does not suffer any illegality or infirmity which may warrant interference in this appeal.

(8) The appeal being devoid of merit, is liable to be dismissed and it is hereby dismissed.

Sd/-
Ag. Chief Justice

Sd/-
Sunil Kumar Sinha
Judge

Rao

P.T.O.